EDITOR'S NOTE

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Supreme Court, U.S.
FILED
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CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

JOSEPH ADAMICK, JANINE ADAMICK, APRIL C. ADAMICK, THE ESTATE OF KATHLEEN JO PRICE Deceased, by its Administratrix, JANINE ADAMICK, and JANICE M. HAYES,

Petitioners,

vs.

DONALD HODEL, Secretary of the Department of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES BUREAU OF LAND MANAGEMENT, ("BLM"), EDWARD SPANG, Nevada State Director of the Bureau of Land Management, ROBERT F. BURFORD, Director of the Bureau of Land Management,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WITH SUGGESTION FOR REMAND PURSUANT TO 28 U.S.C.§2106 FOR WANT OF A FINAL ORDER PURSUANT TO 28 U.S.C. §1291

JANICE M. HAYES, ESQ.
3291 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Attorney for Petitioners

January 31, 1986

QUESTIONS PRESENTED

1. Whether the Court of Appeals improvidently heard the appeal brought by petitioners herein and erred in denying their motion to remand for want of a final Order, in that defendants, respondents herein, did not obtain summary, or any, judgment on all issues raised in the Complaint, and the denial of plaintiffs' motions for partial summary judgment and for a preliminary injunction did not constitute final orders?

2. Whether the Court of Appeals erred in ruling that the defendants had complied with the Order in Interior Freedom of Information Act Appeal No. 81-8 that defendants copy all pages of every Desert Land Act application filed in Nevada inasmuch as defendants' motion for summary judgment did not raise this issue and the only motion on this issue was plaintiffs' motion for partial summary judgment, which was denied?

3. Whether 43 U.S.C. 2450.6, which

authorizes a minor official of the Interior Department to revoke a final land classification decision of the Secretary of the Interior, without hearing or public notice, is unconstitutional on its face and as applied to petitioners in that it is violative of Art. 4, Sec. 3, Cl. 2 of the United States Constitution and legislation enacted in support of that provision?

4. Whether the Secretary of the Interior is required to make and publish his interpretation of whether 43 U.S.C. 2521.2(d) requires that applicants for public land in Nevada under the Desert Land Act must prove they have a source of water prior to granting of a grant of entry and whether Public Law No. 89-292 authorizes use of water from the Southern Nevada Water Project to support a Desert Land Act acquisition?

5. Whether BLM had classified the land on which petitioners applied as suitable for Desert Land Act entry and acquisition when it made a decision on the merits of their

applications, and is estopped, pursuant to 43 U.S.C. §2450.2, which requires that the land be classified as suitable before any other action is taken, from reclassifying the land as unsuitable?

6. Whether the district court should grant petitioners' complaint for mandamus to compel defendants to properly administer the Land Act application program in Nevada?

7. Whether the Court of Appeals erred in denying attorney's fees to petitioners, in that petitioners had prevailed on a FOIA appeal, defendants failed to comply with the FOIA Order and petitioners brought an action to compel agency action unreasonably delayed?

TABLE OF CONTENTS

	Page
Questions Presented	1
Table of Contents	i
Table of Authorities	iii
Opinions Below	4
Jurisdiction Of The Court	5
Constitutional Provisions, Statutes And Regulations Involved	6
Statement Of The Case	8
Reasons Why A Writ Of Certiorari Should Be Granted If This Court Declines To Remand The Action	14
This Court Should Vacate The Order Of The Court Of Appeals And Remand This Action As There Is No Final Order From The District Court	18
The Court Of Appeals Erred In Finding That The Classification Issue Was Not Before The District Court	22
If The Issue Was Not Properly raised, petitionrs should be permitted To Amend Their Complaint	23

Page

The Court of Appeals erred in ruling that defendants had complied with FOIA Appeal Order 81-8 25

Respondents acknowledge that Petitioners' DLE applications are still pending 24

The Court Of Appeals Erred In Ruling That Defendants Had Complied With FOIA Appeal Order 81-8 25

43 U.S.C. 2450.6 Is Unconstitutional On Its Face And As Applied 27

Respondents Classified The Subject Land As Suitable For DLE Entry 29

Petitioners Are Entitled To A Writ Of Mandamus 30

Petitioners Are Entitled To Attorney's Fees 32

CONCLUSION 32

APPENDIX IS IN A SEPARATE VOLUME

CERTIFICATE OF MAILING separately presented

TABLE OF AUTHORITIES

Page

Cases

Catlin v.U.S.
324 U.S. 229, 65 S.Ct.
631 (1945) 21

Cohen v. Beneficial
Industrial Loan Corp.
337 U.S. 641, 69 S. Ct.
1221 21

Faulkner v. Watt
661 F. 2d 809, (1981) 30

Lazy FC Ranch
481 F. 2d 985 (9th Cir. 30
1973)

Morton v. Ruiz,
415 U.S. 199, 94 S.Ct.
1055 (1974) 28

Nixon v. Fitzgerald
102 S. Ct. 2690 21

Saulque v. U.S.A. et. al.
28 663 F. 2d. 968 28

State of Nevada, ex rel
Nevada State Board of
Agriculture, 699 F. 2d
486 20

U.S. v. Wharton,
514 F. 2d 406, 410
(9th Cir. 1975) 30

TABLE OF AUTHORITIES (cont.)

UNITED STATES CONSTITUTION	Page
Art. 4, Sec. 3, Cl. 2	2, 7, 8, 27
First Amendment	14, 17
Fifth Amendment	14, 17
STATUTES OF THE UNITED STATES	
5 U.S.C. 552	11
5 U.S.C. 552(a)(4)(e)	7, 17, 32
28 U.S.C. 1254(1)	6
28 U.S.C. 1291	18, 32
28 U.S.C. 1292(b)	6
28 U.S.C. 2016	6
28 2347(b)(1)	12, 13
28 U.S.C. 2412(d)	7, 32
28 U.S.C. 2678	7, 32
43 U.S.C. 321	7, 29
FEDERAL RULES OF CIVIL PROCEDURE	
Rule 15(a)	23
Rule 54(b)	18
Rule 56	

/

TABLE OF AUTHORITIES

FEDERAL REGULATIONS	Page
43 C.F.R. 2450.2	3, 7, 9, 15 27, 29
43 C.F.R. 2450.6	2, 7, 8, 12 16, 19, 27
43 C.F.R. 2521.2(d)	2,15, 19
43 C.F.R. 2521,2(b)	31
43 F. Reg. 7294 (1964)	
43 Fed. Reg. 59555 (1978)	9
MIscellaneous	
Freedom of Information Act Appeal No. 81-8	1, 3, 8, 11, 17,
Interior Board of Land Appeal Order	11
Public Law 82-292	2, 15, 28
Case No. 83-7599, Adamick, et al. v. Department of the Interior Direct appeal to Court of Appeals. Related case.	12, 13, 23, 24
UNITED STATES SUPREME COURT RULES	
Rule 17	19

CASE NO. _____

SUPREME COURT OF THE UNITED STATES
October Term, 1985

JOSEPH ADAMICK, et al.,

Petitioners,

vs.

DONALD HODEL, Secretary of the Department of the Interior, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WITH SUGGESTION FOR REMAND PURSUANT TO 28 U.S.C. §2106 FOR WANT OF A FINAL ORDER UNDER 28 U.S.C. §1291

The petitioners respectfully pray that a writ of certiorari issue to review the Memorandum Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on October 2, 1985.

OPINIONS BELOW

The Order of the United States District Court for the District of Nevada in Case No. CV-LV-81-586, RDF, granting the defendants'

motion for summary judgment on some points was not reported. The unpublished Memorandum Order of the United States Court of Appeals for the Ninth Circuit in Case 1894, Joseph Adamick, et al. v. Donald Hodel, et al. is at p. 1a of the Appendix in a separate volume.

The order of the district court denying plaintiffs' (petitioners herein) motion for partial summary judgment and specific performance is at p. 19a, and other orders appear at 21a and 25a.

JURISDICTION OF THIS COURT

The unpublished Memorandum of the United States Court of Appeals for the Ninth Circuit affirming the district court and declining to rule on some issues was entered on October 2, 1985, p. 1a.

No petition for rehearing was filed.

Mr. Justice Rehnquist granted an extension of time until January 31, 1986 in which to file a petition for a writ of

certiorari.

As set forth in the first question presented, petitioners contend that they took an appeal in order to preserve their rights in the event the Court of Appeals later determined that the Orders of the District Court comprised a final judgment.

Petitioners' first question asks this Court to determine that the Court of Appeals erred in not remanding this action, Order at p. 18a, and to vacate the Order of the Court of Appeals in that it improvidently heard the appeal.

The jurisdiction of this court arises, if at all, under 28 U.S.C. §1254(1), and the authority to vacate the Order of the lower court and to remand the case arises under 28 U.S.C. §2016.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, federal regulations and statutes involved are the

Desert Land Act, 43 U.S.C. §321, et seq., at p. 34a of the separate Appendix, Art. 4, Cl 2 of the United States Constitution, the First and Fifth Amendments to the United States Constitution, 43 C.F.R. 2450.2, at p. 38a, 43 C.F.R. §2450.6, at 39a, 43 C.F.R. 2521.2(d), at 41a, 28 U.S.C. §1361, 28 U.S.C. §1291, and statutes pertaining to attorney's fees, 28 U.S.C. §2678, 28 U.S.C. 2412(d) and 5 U.S.C. (a)(4)(e).

Article 4, Sec. 3, Cl.2 of the United States Constitution:

> Control of the Property and Territory of the Union.
>
> 2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state.

STATEMENT OF THE CASE

This case concerns the administration of the Desert Land Act; p. 34a, program in Nevada, the failure of the defendants to comply with Interior Freedom Of Information Act (FCIA) Orders in FOIA Appeal No. 81-8, App. p. 15a, favorable to the petitioners, defendants' refusal to interpret and evenly apply 43 C.F.R. 2521.2(d), at p. 41a, the constitutionality and validity of 43 C.F.R. §2540.6, p. 39 , which permits an "authorized official of the Department of the Interior to overturn a land classification decision of the Secretary without hearing or public notice and in derogation of Art. 4, §3, Cl. 2 of the United States Constitution.

Prior to 1964, private acquisition of federally owned land in Nevada was permitted in Nevada under various federal statutes, including the Desert Land Act.

On June 4, 1964, then Secretary of the Interior Stewart Udall imposed a moratorium on filing of Desert Land Act Entry ("DLE")

application in Nevada, Revision of Application Procedures for Public Lands, 43 Fed. Reg. 7294(1964).

On April 25, 1978, the State of Nevada filed a Complaint for Mandamus, Injunctive and Declaratory Relief in the United States District Court, seeking, inter alia, the lifting of the moratorium and alleging that there was plenty of water to support DLE application in Nevada, Case No. Civ-R-78-77, 699 F. 2d 486.

On December 14, 1978, then Acting Assistant Secretary of the Interior Wicks rescinded the moratorium Order, 43 Fed. Reg. 59555 (1978).

The Order provided that the Nevada Bureau of Land Management ("BLM") would commence accepting DLE application on January 1, 1979.

The BLM subsequently selected approxmately 8 million acres of the 49 million available as suitable for DLE entry and distributed maps noting the location of said

8 million acres.

Petitioners, plaintiffs and appellants in the lower courts, filed applications and acquired priority filing rights.

43 C,F.R. 2540.2 provides that BLM must first determine whether an application is properly filled out and then must classify the land, prior to making any decisions on the individual merits of an application.

There all three types of decision made by BLM:

1. A land classification decision which is applicable regardless of who applies for the land. This decision can not be appealed to the Board of Land Appeals.

2. A decision regarding the merits of an application. Such a decision may be appealed to the Board of Land Appeals.

3. A decision regarding water source which BLM alleged was not appealable either to the Board or Secretary.

The BLM State Director rejected petitioners' application in May, 1980 based on unsuitablity of the crop, the jojoba bean.

Petitioners appealed to the IBLA which by Order dated August 20, 1980, App. P. 9a, set aside BLM's determinations and remanded the cases.

The IBLA did not retain jurisdiction on remand.

As BLM failed to supply any information requested, petitioners filed an appeal under the Freedom on Information Act, 5 U.S.C. §552.

The Interior Acting Associate Solicitor remanded the FOIA appeal, No. 81-8, to BLM by Order dated March 12, 1981, and stated that BLM might invoke FOIA exemptions 4, 6 and 9, which BLM failed to do.

By further Order dated March 25, 1981, p. 15a, the Interior FOIA Officer granted petitioners access to every page of every DLE application filed in Nevada and provided that BLM must copy them at 5¢ per page.

By September 15, 1981, BLM had not complied with the IBLA Order and had not fully complied with the FOIA Order.

Petitioners filed the instant action.

The Complaint is at p. 42a; the prayer

is at p. 63a.

In their Complaint and in a Motion for Preliminary Injunction, which was denied, Petitioners sought to enjoin the defendants, inter alia, from reclassifying the land on which they applied in any way adverse to petitioners.

Notwithstanding, BLM entered new decisions incorrectly labeled as "land classifications," alleging that the land was unsuitable.

Petitioners timely appealed to the Secretary, who failed to exercise his discretion to overturn the Order, which therefore became the final Order, by operation of law, pursuant to 43 C.F.R. 2450.6, at p. 39a.

Petitioners, as a precaution, filed a Petition For Review of the Order reclassifying the land in a separate action, Case No. 83-7599, Adamick, et al. v. Department of the Interior, a direct appeal to the Court of Appeals from agency action.

Petitioners filed a notice in the

district court advising it regarding said related action and that the land reclassification issue would be litigated in the district court if the Court of Appeals lacked jurisdiction.

Petitioners also moved the Court of Appeals to transfrer the related action to the district court, pursuant to 28 U.S.C. §2347 (b)(1)(3) for consolidation and filed a copy of the motion in the district court, on December 20, 1983.

On December 20, 1983, the Court of Appeals granted respondents' motion to dismiss for want of jurisdiction, App. p. 29a, and by Order of January 24, 1984, simultaneously denied petitioners' motion for an extension of time to file a Petition for Rehearing and the Petition for Rehearing and directed that the mandate issue forthwith, p. 30a, in related Case No. 83-7599.

The district court had denied plaintiffs' motion for a continuance and for partial summary judgment on the FOIA issue on

January 16, 1984, p. 26a, and on January 17, 1984, granted BLM's motion for summary judgment.

Petitioners improvidently appealed, and the Court of Appeals denied their motion to remand the instant action for want of a final Order, p. 18.

The Court of Appeals affirmed in an unpublished Memorandum, p. 1a, erring in several findings and declining to rule on issues raised in the Complaint.

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED IF THIS COURT DOES NOT REMAND THE ACTION

This petition presents several of the reasons delineated in Rule 17 of the Rules of the Supreme Court as bases for consideration of a review on writ of certiorari. if this court declines to remand the action to the Court of Appeals.

1. There are important questions of federal law which should be settled by this Court. The questions were not addressed by

either lower court.

These questions affect many persons. More than 4000 persons filed DLE applications in Nevada alone in two years.

Many of these applications were improperly rejected by BLM prior to BLM's making a land classification decision, in contravention of 43 U.S.C. 2450.2.

BLM has arbitrarily and inconsistently applied 43 C.F.R. 2521.2(d), pertaining to whether applicants for land in Nevada under the Desert Land Act must supply proof of a water source prior to a grant of entry, and denied many applications while not requireing some applicants to make such proof.

The Secretary has refused to make and publish his interpretation of this regulation, and BLM has evaded review by the Board of Land Appeals by rejecting applications but stating that said rejection is a non-appealable final Order.

The Secretary has additionally declined to interpret whether Public Law No. 89-292

authorizes use of water from the Southern Nevada Water Project to support a Desert Land Act entry.

43 C.F.R. 2540.6, p. 39a, which provides that a minor official may overturn a land classifiction decision of the Secretary of the Interior, without hearing or public notice, is violative of Art. 4, Sec. 3, Cl. 2 of the Constitution, .

The public lands belong to all the citizens of the United States and all are entitled to an equal opportunity to acquire public land.

This regulation permits a minor official to arbitrarily overturn a land classification decision at any time prior to a grant of a patent. Such a situation leads to uncertainty and deprives applicants of their property rights. when their land is reclassified.

2. The Court of Appeals decided a federal issue in conflict with applicable decisions of this Court when it found that petitioners were not entitled to attorney's

fees under the Freedom of Information Act, pursuant to 5 U.S.C. §552(A)(4)(e).

Petitioners prevailed on appeal of BLM's denial of their requests, and the Interior Freedom of Information Officer ruled that BLM must copy every page of every DLE application filed in Nevada and send this information to petitioners. See Order, p. 15a.

BLM failed to do so. The very purpose of the Freedom of Information Act and the salutory reasons underlying . (A)(4)(e) would be negated if successful requesters are not able to obtain attorney's fees when they are compelled to file actions to compel compliance with FOIA Orders.

This court has consistently found that persons similarly situated who have prevailed are entitled to fees incurred in enforcing a FOIA Order.

THIS COURT SHOULD VACATE THE ORDER OF THE COURT OF APPEALS AND REMAND THIS ACTION AS THERE IS NO FINAL ORDER OF THE DISTRICT COURT

Petitioners concede that their appeal was improvidently taken to and heard by the Court of Appeals as there was no final Order pursuant to 28 U.S.C. 1291 and Federal Rule of Civil Procedure 54(b).

Petitioners took the appeal to preserve their rights in the event that Court of Ap- might later decide there had been a final order which should have been appealed.

That is exactly the decision reached by the Court of Appeals, which denied petitioners' motion to remand the action. See Order, p. 18a.

The district court did not rule on several issues raised in the Complaint, which is at p. 42a, nor did defendants move for summary judgment on the following issues:

1. Defendants had classified the land applied for as suitable for entry under the Desert Land Act, as they had made a decision

on the merits--whether the jojoba bean is a suitable crop, p. 49a. 43 C.F.R. 2450.2 provides that BLM must (1) make a land classification decision before any decision on the merits is made.

2. That defendants acted improperly in "rejecting" plaintiffs' applications for alleged failure to show proof of a water supply but stating the "decision" was not an appealable Order, thus foreclosing petitioners' right of review. See p. 53a. he IBLA advised petitioners that IBLA would not act unless and until an adverse decision was entered.

3. The Secretary failed to interpret 43 C.F.R. 2521.2(d). BLM did not require other applicants to provide proof of a water supply, p. 54a.

4. Plaintiffs alleged that BLM had preselected successful applicants, p. 58a, and that BLM had BLM had no intent of granting entry to other than a preselected group, in contravention of its promise in State of

Nevada, ex rel. Nevada State Board of Agriculture, 699 Fed. 2d 486, that it would process and fairly consider DLE applications in Nevada in accordance with applicable law.

5. Defendants failed to state whether P.L. 89-292 authorizes use of the water from the Southern Nevada Water Project which provides water from the Colorado, a navigable river, to support a DLE entry, under 43 U.S.C. 321, et seq., and whether BLM had allowed other applicants to use said water, p. 59a and 60a.

6. Plaintiffs' motion to enjoin BLM from reclassifying the land on which they had applied, in any manner which would foreclose their rights of entry, which was filed with the Complaint and made a part thereof, p. 64a.

The district court's denial of the motion for a preliminary injunction did not serve as a final order on the issues. The court merely determined that an injunction was not necessary at that time.

It is well settled law that a final

judgment is one which disposes of all claims raised in the Complaint or tried by consent.

Petitioners have listed six issues which were not adjudicated.

Federal Rule of Civil Procedure 54(b) provides that no appeal may be taken unless all claims as to all parties are adjudicated.

There was no 54(b) certificate.

A case must be "in" the Court of Appeals for purposes of 28 U.S.C. §1254, which authorizes the Supreme Court's review of "cases in" the Courts of appeals. Nixon v. Fitzgerald, 102 S. Ct. 2690.

Appeal will lie only from a final order which ends all litigation on the merits, Catlin v. U.S., 324 U.S. 229, 65 S. Ct. 631, (1945).

The case does not involve a unsettled question of sufficient urgency to fall within the "collateral order" doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 641, 69 S. Ct. 1221.

There was no certificate under 28 U.S.C.

1292(b).

In addition, the district court did not rule on plaintiffs' claims brought under the First and Fifth Amendments and that BLM deprived them of property interests by refusing to process their applications.

The Court Of Appeals Erred In Finding That The Classification Issue Was Not Before The District Court

Petitioners have shown that their Complaint and accompanying Motion For Preliminary Injunction sought injunctive relief to prevent defendants from reclassifying the subject land, that they filed notices in the district court pertaining to objections to the decisions, defendants' failure to transmit case files and materials to the Secretary and the filing of the direct appeal in the Court of Appeals and of their Request that the Court of Appeals transfer their direct appeal to the district court. See pp. 13 and 14, supra, Statement of the Case.

The district court had full knowledge

Director could not constitutionally reclassify the subject lands.

If The Issue Was Not Properly Raised Petitioners Should Be Permitted To Amend Their Complaint, If Necessary

If this Court remands this action, petitioners should be permitted to amend their Complaint, pursuant to Fed. R. of Civ. P. 15.

They did not have an opportunity to do so as the district court granted defendants' motion for summary judgment on January 17, 1984 and denied plaintiffs' motion for a continuance on January 16, 1984, p. 26(a), shortly after the Court of Appeals had dismissed the related action, Case No. 83-7599, p. 29a. See pp. 12 and 13, supra.

The Court Of Appeals Erred In Not Considering The Related Action.

The Court of Appeals declined to consider Case No. 83-7599, a direct appeal from agency Orders reclassifying the subject lands.

Said Case was relevant to prove that

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petitioners raised the classification decision issue in the district court and intended to litigate it there if the Court of Appeals dismissed for want of jurisdiction.

Respondents Acknowledge That Petitioners' Applications Are Still Pending

The Court of Appeals erred in stating that petitioners had no applications to assign. In a letter dated October 14, 1983, the Assistant Secretary of Land and Water Resources assured petitioners that their priority filing rights would not be extinguished as long a litigation if before the federal court, p. 31a.

The government stated in a memorandum in support of motion to dismiss for want of jurisdiction in related Case 83-7599 that, "petitioners' applications are still before the Nevada BLM Director," p. 32a.

Unless this court vacates the Order of the Court of Appeals Order that all claims had been litigated and resolved against the petitioners, they can not pursue litigation

on the unresolved claims presented in their Complaint.

THE COURT OF APPEALS ERRED IN RULING THAT DEFENDANTS HAD COMPLIED WITH FOIA APPEAL ORDER 81-8

The Court of Appeals erroneously assumed that defendants' motion for summary judgment concerned the FOIA Order, which is at p. 15a.

In fact, defendants alleged only they had complied with the Magistrate's discovery Order, p. 21a. Defendants could comply with said Order without complying with the FOIA Order. The petitioners already had the rights mentioned. The Magistrate's Order could not and did not modity the FOIA Order, as defendants had not requested any modification.

The serial pages are available to the general public, and in addition, are part of the DLE application. See p. 16a. Petitioners already had the right to have BLM copy said pages. Petitioners did not request that BLM transport case files to Reno,

nor agree that defendants' offer to do so satisfied their obligation under the FOIA Order.

Defendants' motion for summary judgment was not supported by Affidavits.

The Declaration of William Stowers, p. 28a, was submitted by defendants in opposition to plaintiffs' motion for partial summary judgment. See p. 27a.

The Declaration on its face admitted that defendant had supplied only 2305 first pages of DLE applications, whereas the FOIA Order stated there were 2800 active DLE applications, p. 15a.

Petitioners' motion and facts were thus uncontroverted, and petitioners were entitled to summary judgment as a matter of law.

The denial of petitioners' motion can not operate as an adjudication of the issue.

The Court of Appeals' erroneously assumed that the district court granted summary judgment to defendants on the FOIA

claims and that petitioners had an obligation to refute contentions never raised in defendants' motions.

Petitioners pray that this Honorable Court remand this action so that they can obtain enforcement of the FOIA Order.

43 U.S.C. 2450.6 IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

Art. 4, Sec. 3, Cl. 2 vests the authority to dispose of public land in the Congress. Congress delegated its grant of authority to the Secretary of the Interior.

This issue was not litigated in the district court.

Defendants failed to cite any authorityity to support this regulation.

By failing to comply with 43 U.S.C. 2450.2 which requires that BLM classify all applied-for lands and the BLM Manual, BLM has evaded the requirement for public hearing, which would apply if the classification pertains to more than 2500 acres.

The application of 43 C.F.R. 2450.6 de-

petitioners' right to due process and to meaningfully contest the reclassification.

The Secretary of the Interior holds the public lands in trust and stands in a special relationship to the public, Saulque v. U.S.A.,et al., 663 F. 2d. 968.

DEFENDANTS ARBITRARILY AND UNEVENLY APPLIED 43 U.S.C. §2521.2(d)

The secretary failed and refused to disclose his interpretation of 43 U.S.C. 2521. 2(d). BLM arbitrarily processed applications which contained no proof of a water soruce, while demanding that petitioners produce said evidence. Under 5 U.S.C. 552, the Secretary is required to publish his interpretations of a regulation, Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055 (1974).

Respondents also failed to interpret whether DLE applicants can use water from the Colorado River under P.L. 82-292, notwithstanding that the Colorado River may be excluded as a source of water under the Act,

being a navigable stream. See p. 35a, 43 U.S.C. §321.

Petitioners demonstrated they had made applications to the Las Vegas Valley Water District, which administered the Colorado River project, for water.

By failing to comply with FOIA Order and withholding approximately 500 applications from petitioners, BLM prevented them from discovering whether any applicants intended to rely on Colorado River water.

Petitioners raised this issue in their Complaint, but it was not adjudicated.

RESPONDENTS HAD CLASSIFIED THE SUBJECT LAND AS SUITABLE FOR DLE ENTRY

BLM disregarded its own regulations by making a decision on the merits--that jojoba was not a qualifying crop--before it classified the subject land. 43 U.S.C. §2450.2 requires that the land be classified before the merits of an individual application are considered.

Petitioners filed their applications in 1979. BLM did not make its alleged classification until more than four years later, although the BLM Manual requires that it classify the land within 60 days, Faulkner v. Watt, 661 F. 2d 809, (1981).

Petitioners reasonably believed that inasmuch as BLM made a decision on the merits, the land was suitable. BLM did not make any allegation in the jojoba decision or in its unappealable water decisions that the land was unsuitable.

Estoppel may be applied against the government, even when it acts in its sovereign capacity, United States v. Wharton, 514 F. 2d 406 410 (9th Cir. 1975), Lazay FC Ranch, 481 F. 2d985, 989 (9th Cir. 1973).

PETITIONERS ARE ENTITLED TO A WRIT OF MANDAMUS

Petitioners noted many violations of the public land laws. BLM permitted applicants to apply for small, non-contiguous parcels of landand to apply as agents for other

persons or corporations and to assign applications to non-eligible entities.

Petitioners had a right to expect that government attorneys would disqualify themselves voluntarily if they or family members had filed DLE applications, inasmuch as all applicants were in competition for available water supplies.

A former U.S. Attorney, Mahlon Brown, listed the Post Office Box number for the U.S. Attorney's Office as his address and permitted other persons to also do so, in contravention of 43 U.S.C. 2521.2(b), which provides that applicants must state their place of actual residence and their post-office addresses.

A Assistant U.S. Attorney acted properly in disqualifying himself as he had made a DLE application.

Petitioners found that a U.S. Congrssmen, state Senators, public officials and judges were among the applicants.

BLM failed to supply 500 applications. Petitioners were entitled to know whether government attorneys were among that group.

It is reasonable to assume that these 500 applications were withheld to conceal the identities of some applicants.

PETITIONERS ARE ENTITLED TO ATTORNEY'S FEFS UNDER U.S.C. §552(a)(4)(e).

Petitioners completely prevailed on their FOIA Appeal and inasmuch as they were compelled to file the instant action to obtain records, they are entitled to compensation under U.S.C. §552(a)(4)(e), as well as 28 U.S.C. 2678 and 28 U.S.C. §2412(d).

CONCLUSION

This Honorable Court should vacate the Order of the Court of Appeals for the Ninth Circuit, in that it lacked jurisdiction to hear the appeal pursuant to 28 U.S.C. §1291 as the district court did not adjudicate all claims.

Petitioners ask the Court to remand this action to allow petitioners to pursue their

unlitigated claims in the district court.

If the court is not so disposed, petitioners pray that the court will grant a writ of certiorari on the issues presented.

Respectfully submitted,

JANICE M. HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Attorney for Petitioners